

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JANE DOE,
Plaintiff,

C.A. NO.:

v.

MAX NICASTRO
Defendant.

NOTICE OF REMOVAL

To: Chief Judge and Judges of the United States District Court for the District of
Massachusetts.

Max Nicastro, defendant in the above-captioned action, hereby files this Notice of
Removal of this action from the Department of the Trial Court, Superior Court of Suffolk to the
United States District Court for the District of Massachusetts, pursuant to 28 U.S.C. § 1441, and
in support thereof avers as follows:

1. As appears from the docket, files and records of the Suffolk Superior Court, the
above-captioned action was filed on January 23, 2014.
2. On or about March 10, 2014, the Plaintiff sent by certified mail the summons and
complaint to Max Nicastro at his parents home in Thousand Oaks, California.. The mail was
signed for by a housekeeper. Defendant's parents were away at the time and received the
summons and complaint on March 14, 2014.
3. No further proceedings have been had in the Suffolk Superior Court in connection
with the above-captioned action.
4. The above-captioned action is a civil action alleging personal injuries to the
plaintiff, Jane Doe. The Complaint purports to set forth a claim of intentional sexual assault

against the defendant, Max Nicastro.

5. The plaintiff, Jane Doe, alleges that as a result of this incident, she suffered injuries to her vaginal and rectal areas including abrasions to these areas and a laceration of her rectum. She alleges damages including subsequent and ongoing medical treatment, counseling and expenses related to her severe and permanent physical and personal injuries, and well as severe and permanent impairment and severe emotional anguish.

6. The amount in controversy in this action, exclusive of interest and cost, exceeds the sum of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00). Upon information and belief, plaintiff made a pre-suit demand of \$250,000.00. Plaintiff's Civil Action Cover Sheet lists an indefinite amount of damages, \$25,000+, which is itemized as medical expenses and anticipated future medical expenses. Significantly, plaintiff's statement of damages does not include any itemization for damages related to plaintiff's alleged severe and permanent impairment and severe emotional anguish. Rather, plaintiff states that the amount of these damages are "To be determined by a jury." Given the nature of plaintiff's cause of action, plaintiff's alleged damages for severe and permanent impairment and severe emotional anguish are much more significant than her medical expenses alone. Thus, based on the nature of the cause of action alleged and claimed damages, there is more than a "reasonable probability" that the amount in controversy exceeds \$75,000 as required for removal. Youtsey v. Avibank Manufacturing, Inc., 734 F.Supp.2d 230, 236 (D. Mass. 2010).

7. Upon information and belief, the Plaintiff, Jane Doe, is a resident of the State of Texas.

8. Defendant, Max Nicastro, is currently residing in the State of Ohio and formerly

resided with his parents in Thousand Oaks, California.

9. This Court has original jurisdiction of the above-entitled action, pursuant to 28 U.S.C. § 1332, and the action may therefore be removed to this Court, pursuant to 28 U.S.C. § 1441(b).

10. This Notice of Removal is filed within thirty (30) days of service of the Summons and Complaint in this action by certified mail to Max Nicastro at his parents' home.

WHEREFORE, Max Nicastro prays for removal of the above captioned action from the Trial Division of the Superior Court of Suffolk to the United States District Court of the District of Massachusetts.

MAX NICASTRO,

By His Attorney,

/s/Timothy J. Duggan
Timothy J. Duggan, Esq. (BBO# 545966)
Duggan, Gianacoplos & Mahoney, LLC
89 Access Road, Unit A
Norwood, MA 02062
T: (781) 762-0077
F: (781) 762-9299

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document was served via first class mail, postage prepaid on April 2, 2014 on:

Patrick T. Jones
Richard W. Paterniti
Jones Kelleher, LLP
21 Custom House Street
Boston, MA 02110

/s/Timothy J. Duggan
Timothy J. Duggan

Commonwealth of Massachusetts**County of Suffolk
The Superior Court****CIVIL DOCKET # SUCV2014-00257-E
Courtroom CtRm 916, 3 Pemberton Square, Boston****RE: Doe v Nicastro
TO:**Patrick T. Jones, Esquire
21 Custom House Road
Boston, MA 02110**SCHEDULING ORDER FOR F TRACK**

You are hereby notified that this case is on the track referenced above as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated, and case shall be resolved and judgment shall issue **11/14/2015**.

<u>STAGES OF LITIGATION</u>	<u>DEADLINES</u>		
	SERVED BY	FILED BY	HEARD BY
Service of process made and return filed with the Court	04/23/2014	04/23/2014	
Response to the complaint filed (also see MRCP 12)		05/23/2014	
All motions under MRCP 12, 19, and 20	05/23/2014	06/22/2014	07/22/2014
All motions under MRCP 15	05/23/2014	06/22/2014	07/22/2014
All discovery requests and depositions served and non-expert depositions completed	11/19/2014		
All motions under MRCP 56	12/19/2014	01/18/2015	
Final pre-trial conference held and/or firm trial date set			05/18/2015
Case shall be resolved and judgment shall issue by 11/14/2015			11/14/2015

- The final pre-trial deadline is not the scheduled date of the conference.
- You will be notified of that date at a later time.
- Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.

Dated: 02/06/2014

Michael Joseph Donovan
Clerk of the Court

Telephone: 617-788-8144

RECEIVED

FEB 10 2014

CMJ

Dkd

Commonwealth of Massachusetts

SUFFOLK, ss.



SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION

No. SUCV2014-00257-E

JANE DOE

, Plaintiff(s)

v.

MAX NICASTRO

, Defendant(s)

SUMMONS

To the above-named Defendant: MAX NICASTRO

You are hereby summoned and required to serve upon Richard W. Paterniti, Esq.
JONES KELLEHER LLP

plaintiff's attorney, whose address is 21 Custom House St, Boston, MA 02110, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at Boston either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, Barbara J. Rouse, Esquire, at Boston, the 5th day of March, in the year of our Lord two thousand fourteen.

Michael Joseph Donovan

Clerk/Magistrate

NOTES.

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.
3. TO PLAINTIFF'S ATTORNEY: PLEASE CIRCLE TYPE OF ACTION INVOLVED
(1) TORT — (2) MOTOR VEHICLE TORT — (3) CONTRACT — (4) EQUITABLE RELIEF — (5) OTHER

CIVIL ACTION COVER SHEET	DOCKET NO.(S)	Trial Court of Massachusetts Superior Court Department County: <u>SUFFOLK</u>
PLAINTIFF(S): JANE DOE		DEFENDANT(S) MAX NICASTRO
ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE Patrick T. Jones (253960) & Richard W. Paterniti (645170) Jones Kelleher LLP, 21 Custom House St. Boston MA 02110 (TEL) 617-737-3100		ATTORNEY (if known)
Origin code and track designation		
Place an x in one box only:		
<input checked="" type="checkbox"/> 1. F01 Original Complaint	<input type="checkbox"/> 4. F04 District Court Appeal c.231, s.97 and 104 (After trial) (X)	
<input type="checkbox"/> 2. F02 Removal to Sup. Ct. C.231, s.104 (Before trial) (F)	<input type="checkbox"/> 5. F05 Reactivated after rescript; relief from judgment/Order (M.R.C.P 60) (X)	
<input type="checkbox"/> 3. F03 Retransfer to Sup. Ct. C.231, s.102C (X)	<input type="checkbox"/> 6. E10 Summary Process Appeal (X)	
TYPE OF ACTION AND TRACK DESIGNATION		
CODE NO. B04	TYPE OF ACTION (specify) Other Negligence/Personal Injury	TRACK (F)
		IS THIS A JURY CASE? (X) Yes () No
The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.		
TORT CLAIMS (Attach additional sheets as necessary)		
A. Documented medical expenses to date:		\$ 5,000.00+
1. Total hospital expenses.....		\$ 5,000.00+
2. Total doctor expenses.....		\$
3. Total chiropractic expenses.....		\$
4. Total physical therapy expenses.....		\$
5. Total other expenses (describe).....		\$
	Subtotal:	\$ 10,000.00
B. Documented lost wages and compensation to date.....		\$
C. Documented property damages to date.....		\$
D. Reasonably anticipated future medical and hospital expense.....		\$ 15,000.00+
E. Reasonably anticipated lost wages.....		\$
F. Other documented items of damages (describe).....		\$ To be determined by a jury.
G. Brief description of plaintiff's injury, including nature and extent of injury (describe)..... <i>As a result of the defendant's intentional conduct in sexually assaulting the plaintiff, the plaintiff was caused to suffer severe and permanent physical and personal injuries resulting in medical treatment and expenses, severe and permanent impairment, and severe emotional anguish.</i>		
	Total:	\$ 25,000.00+
CONTRACT CLAIMS (Attach additional sheets as necessary)		
Provide a detailed description of claim(s):		
	Total:	\$
PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPT.		
"I hereby certify that I have complied with the requirement of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) required that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."		
Signature of Attorney of Record <i>Richard W. Paterniti</i>		DATE: 1/23/14

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT

COPY

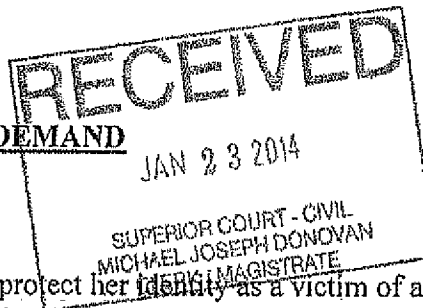
JANE DOE,
Plaintiff,

v.

MAX NICASTRO,
Defendant.

CIVIL ACTION
NO.:

14-0257



COMPLAINT AND JURY DEMAND

THE PARTIES

1. The plaintiff, referred hereinafter as "Jane Doe" to protect her identity as a victim of an intentional assault, was a student at Boston University and resident of Boston, County of Suffolk, Commonwealth of Massachusetts in February 2012 and at all relevant times hereto.
2. Max Nicastro was a Boston University student and resident of Boston, County of Suffolk, Commonwealth of Massachusetts in February 2012 and at all times relevant hereto.

FACTS

3. On or about February 19, 2012, Max Nicastro intentionally sexually assaulted Jane Doe at Boston University in Boston, County of Suffolk, Commonwealth of Massachusetts.
4. The sexual assault by Max Nicastro was both vaginal and anal assaults.
5. By her actions and words, Jane Doe did not consent to the defendant Max Nicastro's conduct.
6. Immediately after the assault, Jane Doe, by and through her representatives, contacted Boston University Police and was subsequently taken to Beth Israel Deaconess Medical Center. When she was first found in her room by Boston University Police, they noted that there was a pool of blood under her in the area where she was sitting.
7. According to medical records, Jane Doe suffered injuries to her vaginal and rectal areas. She was actively bleeding from these areas on arrival to the hospital. Medical staff noted that she suffered abrasions of these areas and a 1 cm laceration of her rectum as a result of the sexual assault. She received medical treatment at Beth Israel and has received subsequent and ongoing medical treatment and counseling.

8. Following the assault and after an investigation by Boston University, Max Nicastro was expelled from Boston University and was banned from all property owned, operated and/or controlled by the University. He did not appeal this decision.
9. As a result of defendant Max Nicastro's intentional conduct in sexually assaulting the plaintiff Jane Doe, Jane Doe was caused to suffer severe and permanent physical and personal injuries resulting in medical treatment and expenses, severe and permanent impairment, and severe emotional anguish.


COUNT I

10. Plaintiff repeats and incorporates by reference herein the allegations contained in paragraphs one through nine, above.
11. The defendant Max Nicastro intentionally sexually assaulted Jane Doe on or about February 19, 2012.
12. As a direct and proximate result of the intentional conduct of Max Nicastro, the plaintiff Jane Doe was caused to suffer severe and permanent physical and personal injuries resulting in medical treatment and expenses, severe and permanent impairment, and severe emotional anguish.

WHEREFORE, the plaintiff, Jane Doe, requests that this Court enter judgment in her favor against the defendant, Max Nicastro, and award her damages to compensate her for her injuries, together with interest and costs.

THE PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES RAISED BY THIS COMPLAINT.

The Plaintiff,
By her attorneys,


Patrick T. Jones, BBO #253960
PJones@JonesKell.com
Richard W. Paterniti, BBO #645170
RPaterniti@JonesKell.com
JONES KELLEHER LLP
21 Custom House Street
Boston, MA 02110
(617) 737-3100

Dated: 1/23/14